IBM Enterprise Software and Services Option

County of San Bernardino / IBM

The terms of this Enterprise Software and Services Option ("Agreement") among County of San Bernardino ("you"), International Business Machines Corporation ("IBM"), and IBM Credit LLC ("IBM Credit"), allow you to receive from IBM and its resellers, the benefit of licensing, subscription, support and software maintenance ("Maintenance") of certain Programs as well as the performance of certain associated services (collectively, the "ESSO Offerings") for one bottom-line price, payable in installments, a portion or all of which is financed by IBM Credit. These installments plus the scheduled finance charges for the financed amounts make up the Option Charges set forth in the "Charges" Section of this Agreement.

The terms of this Agreement are in addition to, and may modify (for the purposes of this Agreement only), those of the "Associated Documents" which govern the acquisition of the ESSO Offerings. The terms of the Associated Documents are incorporated into this Agreement by reference, and you and IBM both agree to the terms of the Associated Documents and this Agreement by signing below.

The following IBM Agreements which are already in place between you and IBM comprise the Associated Documents:

1. IBM Customer Agreement ("ICA") No. 01-856
2. IBM International Program License Agreement ("IPLA")
3. IBM International Passport Advantage Agreement number 03823-7102954 between IBM and State of California-San Bernadino County ("PA").
4. Agreement for Acquisition of Software Maintenance

IBM Credit will finance a portion or all of the ESSO Offerings charges pursuant to the terms of the IBM Credit Term Lease Master Agreement, No.T579275, its applicable supplements and addenda. The Term Lease Master Agreement, together with any Term Lease Supplements thereto that reference this Agreement, each as amended, supplemented or otherwise modified from time to time by any addendum or otherwise are collectively referred to in this Agreement as the "TLMA". All amounts financed will be subject to the TLMA, and you and IBM Credit agree to the terms of the TLMA and this Agreement by signing a TLMA Supplement and this Agreement. The parties acknowledge and agree that the Associated Documents and the TLMA are separate agreements and the TLMA remains legally independent from the Associated Documents. The terms and conditions of the TLMA remain unchanged. Neither IBM nor IBM Credit makes any representation whatsoever regarding your accounting treatment applicable to the charges for transactions under this Agreement. Additional information regarding the financing provided herein is described in the TLMA Supplement.

1. Confidentiality:

You understand that the terms in this Agreement (including the price offered to you as part of this offering) are confidential and you agree not to disclose the terms of this Agreement to any third party without IBM's prior written approval, unless required by law. Notwithstanding the foregoing, you may disclose the terms of this Agreement to your legal counsel and independent auditors under the terms of a written confidentiality agreement between you and such party sufficient to require that party to treat the terms of this Agreement in accordance with this Section 1.

2. Definitions:

Actual Inventory Value:
   The sum of the recurring license charges of the IBM System/390 MLC Programs at any given time.

Option Charges:
   The sum of the charges for the Programs and services subject to this Agreement, including the Rent (as defined in the TLMA) due to IBM Credit under the TLMA for any financing thereof.

S/390 MLC Programs:

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The IBM System/390 and/or zSeries Programs installed and used within your Enterprise which are subject to recurring charges. Note: the term IBM S/390 MLC Programs does not include other recurring charge offerings, including but not limited to support, subscription and software maintenance.

Capitalized terms, the definitions for which are not found in this Agreement, are defined in the applicable Associated Documents.

3. Contract Period:

This Agreement starts on December 1, 2004 ("Start Date") and remains in effect through November 30, 2007, unless earlier terminated as provided herein.

5. Eligible Programs:

The Programs that qualify for the terms of this Agreement ("Eligible Programs") are:
a. S/390 MLC Programs with a coverage period from December 1, 2004 through November 30, 2007 and has a starting inventory of products as listed in Schedule B; and
b. Programs listed on the Product List (Schedule A) which is attached to and made part of this Agreement (the "Listed Programs"). Included in the Option Charges for the Listed Programs are charges for any applicable Maintenance for the Listed Programs and such Maintenance has a coverage period through November 30, 2007.

5. Eligible Use of Programs:

You may use S/390 MLC Programs without incurring additional charges beyond the Option Charges, provided the Actual Inventory Value does not exceed the amounts specified below ("Annual Maximum"):

Date	Annual Maximum
December 1, 2004 – November 30, 2005	$ 1,115,676.00
December 1, 2005 – November 30, 2006	$ 1,164,762.00
December 1, 2006 – November 30, 2007	$ 1,213,848.00

If, at any time, the Actual Inventory Value exceeds the relevant Annual Maximum, you agree to pay the amount by which the Actual Inventory Value exceeds the Annual Maximum as IBM specifies in its invoice to you, according to the most beneficial pricing method (e.g. PSLC) for which you qualify based on the then current Actual Inventory Value.

Use of all Eligible Programs is subject to the terms and conditions of the applicable Associated Documents as if you were acquiring the licenses for such Programs separately at the most beneficial price for which you qualify. However, the S/390 MLC Programs may only be used by that part of your Enterprise that existed as of the Start Date of this Agreement and not by any future business entities or assets of business entities which become part of your Enterprise through merger or acquisition activity after the Start Date of this Agreement.

You may deploy the Listed Programs, as permitted by their Associated Documents referenced in this Agreement, up to the maximum level of use authorizations (quantities) specified in the Product List attached to this Agreement. If your actual deployment of any of the Listed Programs has exceeded the specified maximum level of use authorizations (quantities), you agree to promptly notify IBM of such excess and to pay separately for such excess, as IBM specifies in its invoice, at then current prices.

6. Fulfillment:

S/390 MLC and Schedule A Programs will be fulfilled by IBM.

7. Charges:

You shall pay IBM for all ESSO Offerings provided under this Agreement, regardless of the means of fulfillment. You are responsible for making all IBM Credit financing payments in accordance with the terms of the TLMA. IBM Credit has authorized IBM to serve as its billing and collection agent for the portion of the Option Charges that constitute Rent (as such term is used in the TLMA).

The Option Charges are due as follows:

December 1, 2004	US$1,201,007.00
December 1, 2005	US$1,235,099.00
December 1, 2006	US$1,262,927.00

The Option Charges do not include any additional amounts incurred pursuant to the Section of this Agreement entitled "Eligible Use of Programs" or any Settlement Charges (as such term is used in the TLMA).

The Option Charges and any additional charges beyond the Option Charges incurred pursuant to the Section entitled "Eligible Use of Programs" do not include any provision for any taxes that may be applicable. Any such taxes are your responsibility. The Option Charges are not cancelable except as may be otherwise expressly provided in the section of this Agreement entitled "Termination".

8. Termination:

Subject to the payment of the amounts described below, this Agreement may be terminated by you only on December 1, 2005 ("Anniversary Date") by providing IBM written notice at least ninety (90) days prior to such Anniversary Date.

Upon termination, you will pay to IBM all amounts due and payable up to the effective date of the termination, including, but not limited to any amounts due pursuant to the Section of this Agreement entitled "Eligible Use of Programs," plus any taxes which arise on or before the date of the termination. You will also pay to IBM Credit the charges set forth in the TLMA section entitled "Financing Prepayment".

9. General:

a. This Agreement will not preclude, or in any way limit, IBM or IBM Credit from offering similar terms to other IBM or IBM Credit customers.

b. This Agreement may not be combined with any allowance, discount, or other offering available for these Eligible Programs, unless specifically agreed to in writing by IBM.

c. Acquisitions made under this Agreement may not be resold, rented, leased or transferred to third parties.

d. Both you and IBM will identify one point of contact to facilitate a) the communication between us and b) the management of this Agreement.

e. Any terms of this Agreement, which by their nature extend beyond the date this Agreement ends, remain in effect until fulfilled and apply to respective successors and assignees.

f. For a change to this Agreement to be valid, the parties must each sign it.

g. The parties agree that they will not bring a legal action more than two years after the cause of action arose, unless otherwise provided by local law without the possibility of contractual waiver. The parties expressly waive any right to a jury trial regarding disputes related to this Agreement, the TLMA and/or any Associated Document.

h. You may not transfer or assign this Agreement without the written consent of IBM and IBM Credit. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assignees.

i.   It will be considered a material breach of this Agreement if you set-off, or attempt to set-off, any payments due IBM or IBM Credit under this Agreement by any amounts IBM or IBM Credit owes you, or may owe you, under other agreements you may have with IBM or IBM Credit or if you refuse to make payments under this Agreement based upon any dissatisfaction you may have under any such other agreements.

j.   In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

k.   This Agreement may be signed in one or more counterparts, each of which will be deemed to be an original and all of which when taken together will constitute the same agreement. Any copy of this Agreement made by reliable means is considered an original.

l.   The laws of the State of California, but not its conflict of laws principles, will be used to construe and enforce all of the rights, duties and obligations arising from or relating to the subject matter of this Agreement.

The parties agree that this Agreement, including all Associated Documents, and the TLMA, are the complete agreement between us and replaces any prior oral and/or written communications between us concerning this subject matter. By signing below, the parties agree to the terms of this Agreement. If there is a conflict among terms of this Agreement and those of the Associated Documents, for the purposes of this Agreement, those of this Agreement prevail.

Agreed to: Agreed to:
County of San Bernardino   **International Business Machines Corporation**

By_____   By_____
     Authorized Signature   Authorized Signature

Name (type or print):   Name (type or print):

Date: Date:

Customer number: 8308355
Customer address: 670 East Gilbert Street
                        San Bernadino, CA 92404-5412

Agreed to:
IBM Credit LLC

By:_____
       Authorized Signature

Name (type or print):

Date:

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Schedule A – Product List

For the Programs listed below, you may make and use license copies up to the quantities specified. IBM Software Maintenance for the Programs is included through November 30, 2007.

Quantity	Part #	Description
47 MSUs	5655L23/5655J19	Debug Tool Utils & AF V4
47 MSUs	5655L25/5697G59	Fault Analyzer V4
47 MSUs	5655L26/5697G60	File Manager V4
47 MSUs	5655E94	IMS Library Mgmt Util S&S
47 MSUs	5655E26	IMS Hi Performance Unload S&S
47 MSUs	5655E27	IMS Hi Perf Load for z/OS S&S
47 MSUs	5655E20	IMS Image Copy Extenstion S&S
47 MSUs	5655E23	IMS Index Builder S&S
47 MSUs	5648D68	DB2 Utilities Suite S&S
1 engine	5741A05/5741SNS	Directory Maintenance Fac
1 engine	5741A05/5741SNS	Resource Access Control Fac
1 engine	5741A05/5741SNS	z/VM Version 5
1 engine	5741A05/5741SNS	Performance Toolkit for VM
1 server	E1AR9LL	DB2 Connect Unlimited Edition Host Server Annual SW Maint
47 MSUs	E1AQSLL	DB2 Connect Unlimited Edition MSU Annual SW Maint

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Schedule B – MLC Inventory
Has Value of $92,973

z/OS V1 Base
z/OS V1 C/C++ without Debug
z/OS V1 DFSMS dss
z/OS V1 GDDM-PGF
z/OS V1 RMF
z/OS V1 Security Server
IBM RAMAC SnapShot V1
IXFP V2
COBOL for OS/390 & VM V2-Alt
ACF/NCP V7
IMS/ESA BTS Version 2
IMS V7 Database Manager
IMS V7 Transaction Manager
PSF V3 for OS/390
DEBUG TOOL V4
CICS/ESA V4
ACF/SSP Version 4 MVS
OS PL/I Library Version 2
DB2 UDB for OS/390
QMF for OS/390 (feat of DB2)
PPFA/370
OGL/370
Perf Rep CICS Perf feat
Perf Rep sys Perf feat
Perf Rep WKST Perf
Perf Reporter ACNT Feature
Perf Reporter Capacity P
Perf Reporter for MVS Base
Perf Reporter IMS Perf feat
Perf Reporter Network PF
Tivoli NetView Enterprise